

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )

MUR 4313

Coalition for Good Government, Inc. )

**CONCILIATION AGREEMENT**

This matter was initiated by a signed, sworn, and notarized complaint by the United States Sugar Corporation. An investigation was conducted and the Federal Election Commission ("Commission") found, *inter alia*, probable cause to believe that the Coalition for Good Government, Inc. violated 2 U.S.C. §§ 434(c) and 441d.

NOW, THEREFORE, the Commission and the Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent(s) and the subject matter of this proceeding.

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. The Coalition for Good Government, Inc. ("Coalition") was a Subchapter S corporation incorporated in the state of Delaware on November 6, 1995 and a person within the meaning of 2 U.S.C. § 431(11).

2. The Coalition expended funds totaling \$1,150,000 for an advertisement purportedly relating to legislation then before the Congress that contained four bumper stickers, each making reference to a different United States Senator's candidacy for President

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as follows: "Lugar for President," "Dole for President," "Arlen Specter '96," "Gramm President." At the time the advertisement aired, Senators Lugar, Dole, Specter, and Gramm were declared presidential candidates. Each of the bumper stickers contained express advocacy phrases described in 11 C.F.R. § 100.22(a). However, the advertisement gave Senator Lugar prominence over the other three mentioned Senators by enlarging the image of Senator Lugar and his campaign bumper sticker, while fading out the images and campaign bumper stickers of the other three named Senators, and stating that only Senator Lugar supported the Coalition's position. This focus on Senator Lugar was followed by the reemergence of the other three Senators' images, but not their respective campaign bumper stickers, and the disclosure that they did not support the Coalition's purported legislative position. The advertisement was aired at the same time as the Florida Straw Poll at which the four Senators (along with several other Republican presidential candidates who were not included in the advertisement), were expected to appear.

3. The Federal Election Campaign Act of 1971, as amended ("the Act") defines "contribution" and "expenditure" to include a gift, loan, advance, deposit of money or anything of value made by any person for the purposes of influencing any election for Federal Office. 2 U.S.C. § 431(8)(A)(i) and 2 U.S.C. § 431(9)(A)(i). The definition of "person" includes an individual, partnership, committee, association, corporation, or any other organization or group of persons. 2 U.S.C. § 431(11). "Anything of value" includes any goods or services including but not limited to securities, facilities, equipment, supplies, advertising services, membership lists, and mailing lists. 11 C.F.R. § 100.7(a)(1)(iii) and 11 C.F.R. § 100.8(a)(1)(iv)(A).

4. An "independent expenditure" is defined as an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without

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cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate. 2 U.S.C. § 431(17).

5. "Clearly identified" is defined at 2 U.S.C. § 431(18) as "(A) the name of the candidate involved appears; (B) a photograph or drawing of the candidate appears; or (C) the identity of the candidate is apparent by unambiguous reference." In July 1995, the definition of "clearly identified" at 11 C.F.R. § 100.17 was amended to include an "unambiguous reference" to a person's "status as a candidate." The definition of "expressly advocating" includes communications which contain phrases such as "vote for the President," "re-elect your Congressman," "Bill McKay in '94," or "Smith for Congress," or campaign slogans or individual words, which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, such as a bumper sticker that states "Carter 76." 11 C.F.R. § 100.22(a).

6. Persons, other than political committees, who make independent expenditures in an aggregate amount, or valued at, more than \$250 in a calendar year must file a statement of these expenditures with the Commission. 2 U.S.C. § 434(c)(1). Such statements must include the identification of each person who has made contributions in excess of \$200 to the person filing such statement, which was made for the purpose of furthering an independent expenditure. 2 U.S.C. § 434(c)(2). The statement must also indicate whether the independent expenditure is in support of, or in opposition to, the candidate involved and include a certification whether or not such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate. *Id.*

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7. Section 441d of the Act requires that any person making an expenditure for a communication which expressly advocates the election or defeat of a candidate must include a statement in the communication stating who has paid for the communication and whether or not it has been authorized by the candidate and/or his or her authorized committee. 2 U.S.C. § 441d. This requirement extends to persons making independent expenditures. 11 C.F.R. § 109.3.

8. By prominently displaying Senator Lugar's image and campaign bumper sticker reading "Lugar for President" in a television advertisement, the Coalition expressly advocated Senator Lugar's election, and accordingly the television advertisement was for the purpose of influencing a federal election and therefore constituted an "expenditure." See 2 U.S.C. § 431(9)(A)(i).

9. Because the television advertisement was made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and was not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate, it constituted an "independent expenditure." 2 U.S.C. § 431(17).

10. The Coalition expended funds totaling \$1,150,000 for the television advertisement.

11. As a person other than a political committee that made independent expenditures in an aggregate amount or value in excess of \$250 during calendar years 1995 and 1996, the Coalition was required to file statements of independent expenditures with the Commission during these years.

12. Because the Coalition made expenditures for a communication which contained a bumper sticker that expressly advocated the election of Senator Lugar, it was required to

include a statement in the communication whether or not it has been authorized by the candidate and/or his or her authorized committee in addition to stating who paid for the advertisement. The Coalition failed to include an adequate disclaimer in the advertisement.

V. For purposes of settlement, the Coalition agrees that it made independent expenditures totaling \$1,150,000 during calendar years 1995 and 1996 and failed to file statements of independent expenditures with the Commission in violation of 2 U.S.C. § 434(c). The Coalition further agrees that it failed to include an adequate disclaimer in the advertisement in violation of 2 U.S.C. § 441d.

VI. Respondent will pay a civil penalty to the Federal Election Commission in the amount of Nine Thousand Dollars (\$9,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. 1. The Coalition contends that it has presented evidence demonstrating that it did not intend to influence the presidential straw poll, or to influence any federal election. The Coalition further contends that it instead intended to encourage support of a proposal being considered by the United States Senate at the time which would have helped to save the Everglades.

2. The Coalition also contends that the Everglades advertisement was not intended to contain bumper stickers or other identifying paraphernalia that contained any words of express advocacy. The Coalition presented evidence, including an affidavit signed by Steve McMahon—a name partner of Trippi, McMahon & Squier—that the bumper stickers were included solely due to the actions and decisions of that media firm, which were production judgement decisions related to the visual appeal of multiple colorful bumper stickers, not attempts to influence any election.

3. The Coalition also contends that, acting on advice of previously retained counsel (including that counsel's informal consultation with a senior attorney in the FEC's

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Policy Division), it did not consider the presidential straw poll conducted at the November 1995 Florida Republican Party Convention to meet the FECA definition of an election, and therefore did not consider its advertising to be in connection with any federal election.

VIII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

IX. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

X. Respondent(s) shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

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XI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence H. Norton  
General Counsel

BY: Mark Shubiner December 20, 2002  
Date  
For: Rhonda J. Vording  
Associate General Counsel

FOR THE RESPONDENT:

Coalition for Good Government, Inc.

BY: James F. [Signature] Oct. 31, 2002  
Counsel for Respondent Date

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